

The Special Administrative Law Judge found claimant entitled to permanent partial disability benefits for injury to claimant's right arm based upon impairment of function of five percent (5%). The claimant requests this review. The issue now before the Appeals Board is nature and extent of disability.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Appeals Board finds, as follows:

Claimant is entitled to permanent partial disability benefits for a work-related injury to the right arm based upon a ten percent (10%) impairment of function rating.

(1) The parties stipulated claimant suffered personal injury by accident arising out of and in the course of his employment with the respondent on March 8, 1990. On the day of his accident, claimant experienced pain in his right arm while attempting to remove screws from a machine. After a course of conservative treatment, Dr. Michael T. McCoy, M.D., operated on claimant's right elbow. At the regular hearing, claimant testified he was experiencing pain in his left elbow that had progressively worsened over the past two (2) years as a result of protecting his right arm.

Board-certified orthopedic surgeon Michael T. McCoy, M.D., treated claimant between May 1990 and November 1991. During that period, Dr. McCoy treated claimant's right arm for lateral epicondylitis, olecranon bursitis, and tenderness at the olecranon triceps insertion. He believes claimant has experienced a five percent (5%) permanent partial impairment of function to the right upper extremity as a result of his injuries. Dr. McCoy believes claimant has full range of motion of the right upper extremity and is entitled to an impairment rating for complaints of discomfort only. Although claimant contends his left elbow began hurting in mid-1991 after returning to regular work for six (6) months, Dr. McCoy recalls only one occasion when claimant complained of left elbow pain. Dr. McCoy's office notes of July 30, 1990, contain the only mention of left elbow problems. He does not believe claimant had permanent injury to his left elbow when he last saw him on November 20, 1991.

On March 8, 1993, at his attorney's request, claimant saw Edward J. Prostic, M.D., for evaluation. Dr. Prostic found claimant could not straighten his right arm due to pain and he continued to have tendinitis of the elbow with irritation of the ulnar nerve. The doctor found a five to ten percent (5-10%) deficit in range of motion in the right arm and significant weakness in the forearm. Dr. Prostic believes claimant has sustained a fifteen percent (15%) impairment of function to the right arm as a result of the work-related injuries. Regarding the left arm, Dr. Prostic found minimal tenderness at the medial epicondyle, but every other finding was normal. Based upon his evaluation, Dr. Prostic believes claimant has experienced a two and one-half percent (2.5%) impairment of function to the left arm.

The Appeals Board finds claimant is entitled to permanent partial disability benefits for injury to the right arm only. The evidence fails to establish it is more probably true than not claimant has sustained permanent injury to the left arm for which he would be entitled to benefits in this proceeding. Claimant's impairment of function lies somewhere in the range of five to fifteen percent (5-15%), as indicated above. The Appeals Board finds claimant is entitled to receive benefits based upon a functional impairment rating of ten percent (10%). Although Dr. McCoy saw claimant on a number of occasions during treatment, the Appeals Board finds Dr. Prostic's opinion is entitled consideration due to the deficit in range of motion and weakness.

(2) The Appeals Board adopts the findings and conclusions of the Special Administrative Law Judge set forth in his Award, dated August 12, 1994, that are not inconsistent with those expressed herein.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Special Administrative Law Judge William F. Morrissey should be, and hereby is, modified as follows:

AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR of the claimant, Charles H. Garrett, and against the respondent, Goodyear Tire & Rubber Company, and its insurance carrier, Travelers Insurance Company, for an accidental injury which occurred on March 8, 1990, and based upon an average weekly wage of \$1,049.26, for 1.57 weeks of temporary total disability compensation at the rate of \$271.00 per week in the sum of \$425.47, and 20.84 weeks of compensation at the rate of \$271.00 per week in the sum of \$5,647.64 for a 10% permanent partial loss of use of the right arm, making a total award of \$6,073.11.

As of December 9, 1994, all compensation is due and owing and ordered paid in one lump sum, less amounts previously paid.

Future medical benefits will be awarded only upon proper application to and approval of the Director. Unauthorized medical expense of up to \$350.00 is ordered paid to or on behalf of the claimant upon presentation of proof of such expense.

Claimant's attorney fee contract is hereby approved insofar as it is not inconsistent with K.S.A. 44-536.

Fees necessary to defray the expense of administration of the Kansas Workers Compensation Act are hereby assessed to the respondent to be paid direct as follows:

William F. Morrissey Special Administrative Law Judge	\$150.00
Appino & Achten Reporting Service	
Transcript of regular hearing	\$147.70
Deposition of Linda Mae Garrett	\$74.70
Deposition of Michael T. McCoy, M.D.	\$147.35
Scotty Hill, CSR	
Deposition of Edward J. Prostic, M.D.	\$226.90

IT IS SO ORDERED.

Dated this ____ day of December, 1994.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: John J. Bryan, Topeka, KS
Bret C. Owen, Topeka, KS
William F. Morrissey, Special Administrative Law Judge
George Gomez, Director